29 Sup Ct. 148, 53 L. Ed. 371; Willcox *v.* Consol. Gas Co., 212 U. S. 19, 29 Sup. Ct. 192, 53 L. Ed. 382.

In conclusion, we are of opinion that the appellant has failed to sustain the burden cast upon it by the foregoing rule of decision, and that the order of the commission is just, reasonable, and correct, and ought to be affirmed.

Affirmed.

KEITH, P., and CARDWELL, J., dissenting.

HARRIS *v.* CARY et al.

June 8, 1911.

[71 S. E. 551.]

1. Release (§ 18*)—Validity—Duress.—A contract to relinquish an interest in property, made as a result of unlawful demands or threats, is voidable on the ground of duress.

[Ed. Note.—For other cases, see Release, Cent. Dig. § 33; Dec. Dig. § 18.*]

2. Contracts (§ 95*)—"Duress"—Elements.—To constitute "duress," it is sufficient if the will be constrained by the unlawful presentation of a choice between comparative evil, as inconvenience and loss by the detention of property, loss of property altogether, or compliance with an unconscionable demand.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 431-440; Dec. Dig. § 95.*

For other definitions, see Words and Phrases, vol. 3, pp. 2268-2278; vol. 8, p. 7645.]

3. Contracts (§ 95*)—Validity—Compulsion.—When concessions are exacted through one's necessity, to save his property, illegally withheld by another, from destruction or irreparable injury, the transaction may be avoided on the ground of compulsion, though not amounting to technical duress.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 431-440; Dec. Dig. § 95.*]

4. Pleading (§ 214*)—Admission by Demurrer.—Allegations of a bill are admitted as true on demurrer thereto.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 525-534; Dec. Dig. § 214.*]

5. Corporations (§ 127*)—Stock—Surrender—Duress.—Equity will relieve a minority stockholder against agreements under which he has surrendered stock to one controlling the corporate affairs, under

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

pecuniary necessities and unconscionable demands made by the latter, accompanied by threats to destroy the value of the former's holding.

[Ed. Note.—For other cases, see Corporations, Dec. Dig. § 127.*]

Appeal from Chancery Court of Richmond.

Bill by J. W. Harris against W. M. Cary and others. Decree dismissing the suit, and plaintiff appeals. Reversed and remanded.

G. A. Hanson and *P. W. Hardin,* for appellant.
Bev. T. Crump and *Lucius F. Cary,* for appellees.

HARRISON, J. A demurrer to the original bill filed in this cause was sustained by the chancery court of the city of Richmond, and thereupon the complainant, J. W. Harris, by leave of court, filed an amended and supplemental bill, making the original bill part thereof, to which amended bill a separate demurrer was filed by the defendant W. M. Cary, which was also sustained. From the decree sustaining the demurrer to these bills and dismissing the same, this appeal was allowed. The original bill being in totidem verbis made a part of the amended and supplemental bill, the two will be treated and considered as one bill.

The more important allegations are that in January, 1904, J. Samuel McCue and Caroline H. Harris entered into a contract between themselves and the complainant that the parties, other than the complainant, would furnish a sum of money sufficient to option, open up, purchase, and sell lands and mineral rights in Buchanan county, Va., and that the complainant should share equally with them in the net proceeds, after the money advanced, with interest and expenses, had been paid, in consideration of his time and services in developing, opening, and selling the lands and mineral rights so optioned or purchased. It is further alleged that on May 23, 1904, the parties, together with the defendant W. M. Cary, entered into another contract, enlarging the first and agreeing to advance a larger amount of money for the purchase of additional lands, and further agreeing to organize a corporation, to be known as the Buchanan Coal & Coke Company, to which the properties bought should be conveyed. It was further agreed that all moneys advanced and to be advanced should be represented by the preferred stock of the company in proportion to the amount advanced by each; that the common stock was to be likewise apportioned except that the rights of the complainant were provided for in these words: "And J. W. Harris, in lieu of his services rendered in securing said property and to be rendered until said preferred stock is redeemed,

is to receive one-third of the common stock of said corporation, issued for said property." It is further alleged that subsequently the defendant W. M. Cary and W. E. Harris visited Buchanan county and inspected the lands then under option, and other lands adjacent and in that section, and while there the defendant W. M. Cary, though well satisfied with complainant's work and much elated over the value of the lands, insisted that as they were buying more lands than originally contemplated, and as he was advancing and paying out so much money to secure the lands, complainant should be willing to surrender one-ninth of his interest in the common stock; that for the sake of harmony he had agreed to this, and on September 3, 1904, had united with the defendant Cary and W. E. Harris in a written contract, under which he was to receive, in consideration of his services, two-ninths of the common stock of the company, instead of one-third thereof, as provided in the previous contracts. It is further alleged that under this agreement of September 3, 1904, complainant continued his work and services, as he had under the former agreements, faithfully and assiduously doing and performing his work under the direction of the defendant Cary, president of the company, from whom he received approximately 150 letters, instructing and directing him in regard to taking more options, renewing others, dropping some, and buying and paying for certain lands, having the surveys made and opening the coal—in fact, everything in detail pertaining to the lands and interests of the company; that under these directions certain lands embraced in the options to McCue were dropped, and other lands, in their stead, bought for the company, the complainant being directed not to stop taking options and buying lands until from 22,000 to 30,000 acres were secured.

In the meantime Cary, the defendant, had become the purchaser of all of the interests in the company of J. Samuel McCue, under the contract of May 23, 1904, and had thereby become the owner of three-fourths of the holdings of the company, and was under obligation to advance three-fourths of the money necessary to pay for all the lands bought and the costs incident to their purchase; and, holding the majority interest in the company, he was elected president, and his two sons directors, one of them being secretary and treasurer, thereby having complete control of the affairs of the company.

Complainant further alleges that from September 3, 1904, the date of his agreement to take two-ninths of the common stock for his share in the profits, instead of three-ninths, as formerly agreed, to July 19, 1907, there had been no dispute or question raised, or even intimated, as to the meaning of the

agreement of September 3, 1904, fixing his interest at two-ninths of the common stock of the Buchanan Coal & Coke Company; that on July 19, 1907, the defendant Cary, while acting as president of the company, and as such a trustee for complainant, for the purpose of forcing complainant to surrender and sacrifice his interests in the company to him (Cary), wrote a letter to complainant, saying that he had had the two contracts of May and September, 1904, submitted to competent men, and that their finding was, and his interpretation always had been, that complainant's interest in the common stock was limited to such lands as were optioned to J. Samuel McCue, when the defendant Cary knew at the time that complainant had worked for three years, without notice of such construction of the contracts, under his direction, and that at his instance a large part of the lands optioned to McCue had been rejected, and many thousands of acres of other lands taken in their stead by the company; that other letters of like import were sent to complainant by the defendant, in one of which he was told that his interest in the common stock was based upon less than 7,000 acres of the land owned by the company.

It is further alleged that from the time the letter of July, 1907, was written, until March, 1908, the defendant Cary continuously demanded and insisted that complainant should surrender to him one-half of his two-ninths interest in the common stock, and by every conceivable device tried to persuade, induce, and force him to do so, finally threatening complainant that, if he did not surrender to him the stock demanded, he would let the whole thing go, and the company be sold out, and that complainant would then get nothing.

It is further alleged that, at the time of these importunities and threats, complainant had faithfully performed and fully completed his obligations under the contracts between the parties, and that the defendant Cary had wholly failed to perform his part of the contracts by advancing the money to pay for the lands that had been bought; that the defendant Cary then owed about $50,000 that he had agreed to advance, but instead of paying the same he permitted suits to be brought against the company on the obligations due for land, for the sole purpose of carrying out his threats to have the land sold, and thereby to destroy the entire interest of complainant in the common stock of the company, refusing at the same time to issue to complainant any part of the common stock until he should yield and comply with his demand that part of complainant's interest be given to him. Complainant further alleges that, at the time this force and coercion was being exerted over him by the defendant Cary, he had no business experience, except that had with the Buchanan

Coal & Coke Company, and other work of like character; that all of his life, since leaving school, had been spent in the mountains getting options upon coal and timber lands, prospecting and making openings in and otherwise developing such lands; that on March 6, 1908, he had no property; that he was practically without money, having only about $25, and without any immediate prospect of getting employment; that he had a family to support, and owed nearly $1,000 which he had borrowed to sustain himself and family while working for the Buchanan Coal & Coke Company; that he was in financial and mental distress, brought about by the actions of the defendant Cary; that in this distress, so brought about, he was unable to resist the threat of the defendant to let the debts go unpaid, and thereby force a sale of the property, which would result in the total loss of complainant's entire interest in the stock; that complainant was, and had been for some time prior to March 6, 1908, in constant fear that all of his stock would be made worthless by the fraudulent course of the defendant Cary; and that while in this state of fear and financial and mental distress, much against his will, he was forced to and did, for the purpose of having the debts paid and thereby saving himself from financial ruin, make and execute two agreements, dated, respectively, March 6, 1908, and March 18, 1908, which provided that he should only receive three-eighteenths, instead of two-ninths, of the common stock, which two-ninths, under the contract in writing of September 3, 1904, represented his interest, not only for his time and labor for the three years he was at work subsequent to September 3, 1904, but also for one year of work rendered prior thereto under the contract known as the "McCue contract."

Complainant charges that the defendant Cary took advantage of the fact that he was helpless and in his power, and of his own delinquency in failing to comply with his part of the contract by paying the outstanding debts, and of his power as president of the company, chief owner of its assets, in control of its board of directors, and sole manager of its interests, to compel him to surrender, without consideration, one-fourth of his stock to the sole use and benefit of said Cary; that the stock he was thus required to give the defendant Cary was 166 2-3 shares, which at its par value amounted to $16,666.66 2-3. Complainant further charges that the agreements of March 6, 1908, and March 18, 1908, were obtained from him by force, fraud, intimidation, and duress; that they are wholly without consideration, equity, or right; and that, if there was any basis or reason for his being required to give up any part of his stock, which he denies, the portion taken from him should go to the company,

and the defendant Cary not be allowed to appropriate the same, as he has done, as his individual property.

The prayer of the bill is that the agreements of March 6 and March 18, 1908, by which complainant was forced to surrender to the defendant Cary one-fourth of his two-ninths interest in the common stock of the company, be set aside as null and void, so far as they affect the interest of complainant; that pending the further order of the court the defendant Cary be enjoined and restrained from selling or otherwise disposing of the stock acquired by said agreements, or either of them, or, if said Cary has parted with any part thereof, that he may be compelled to keep in his possession and under his control and ownership, subject to the future order of the court, an equal number of shares of like stock of the company to that obtained from complainant; that the said Cary or the Buchanan Coal & Coke Company be required to transfer or issue to complainant an equal number of shares of the company to that taken from him under the agreements aforesaid; and for general relief according to equity and good conscience, as may be deemed proper by the court.

[1, 2] The doctrine appears to be well established that where one party has possession or control of the property of another, and refuses to surrender it to the control and use of the owner, except upon compliance with an unlawful demand, a contract made by the owner under such circumstances to emancipate the property is to be regarded as made under compulsion and duress. Nor can it be doubted that a contract procured by threats, inducing fear of the destruction of one's property, may be avoided on the ground of duress, there being nothing in such a case but the form of a contract, wholly lacking the voluntary assent of the party to be bound by it. To constitute duress, it is sufficient if the will be constrained by the unlawful presentation of a choice between comparative evils, as inconvenience and loss by the detention of property, loss of property altogether, or compliance with an unconscionable demand.

[3] In civil cases, the rules as to duress has a broader application at the present day than that it formerly had. So when concessions are exacted through the necessity of a person, in order to save his property, illegally witheld by another, from destruction or irreparable injury, such a transaction may be avoided on the ground of compulsion, though not amounting to technical duress. Fitzgerald *v.* Construction Co., 44 Neb. 463, 62 N. W. 899; Vyne *v.* Glenn, 41 Mich. 112, 1 N. W. 997; Brueggestradt *v.* Ludwig, 184 Ill. 24, 56 N. E. 419; Alston *v.* Durant, 2 Strob. (S. C.) 257, 49 Am. Dec. 596, and note; Adams *v.* Schiffer, 11 Colo. 15, 17 Pac. 21, 7 Am. St. Rep. 202; Lonergan *v.* Buford, 148 U. S. 581, 13 Sup. Ct. 684, 37 L. Ed. 569.

In the case last mentioned, citing Radich *v.* Hutchins, 95 U. S. 210, 24 L. Ed. 409, it is said that: "To constitute coercion or duress which will be regarded as sufficient to make the payment involuntary, there must be some actual or threatened exercise of power possessed, or believed to be possessed, by the party exacting or receiving the payment over the person or property of another, from which the latter has no other means of immediate relief than by making the payment."

In Harmony *v.* Bingham, 12 N. Y. 99-117, 62 Am. Dec. 142, cited by Mr. Justice Brewer in 148 U. S. 581, 13 Sup. Ct. 684, 37 L. Ed. 569, supra, it is said: "If a party has in his possession goods or other property belonging to another, and refuses to deliver such property to that other unless the latter pays him a sum of money which he has no right to receive, and the latter in order to obtain possession of his property, pays that sum, the money so paid is a payment by compulsion."

[4, 5] In the case at bar, the allegations of the bill, which are admitted to be true by the demurrer, state a case clearly calling for the interposition of a court of equity to afford relief. The helpless situation and the extreme necessities of the complainant were taken advantage of to compel him to surrender to the defendant one-fourth of his property, which was under the latter's control, and to which, as alleged, he had no lawful right, in order to save such property from sacrifice; the choice offered the complainant being financial ruin or immediate compliance with the alleged fraudulent, oppressive, and unconscionable demands of the defendant.

It is clear, both upon reason and authority, that the bill states a good cause of action, entitling the complainant to relief, if the facts alleged are established by the evidence to be adduced.

The decree complained of, sustaining the demurrer to the bill, must therefore be set aside, and this court will enter such decree as the chancery court ought to have entered, overruling the demurrer. And the cause will be remanded to the chancery court, which will, in accordance with the prayer of the bill, enjoin and restrain the defendant W. M. Cary from disposing of the stock in controversy until the further order of that court, and for further proceedings to be had therein not in conflict with the views expressed in this opinion.

Reversed.